$~13 & 14

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 743/2017

PRADEEP GOVIL ..... Appellant

versus

INCOME TAX OFFICER WARD NO37((2) NEW DELHI ..... Respondent

\+ ITA 744/2017

NEELAM PRASAD GOVIL ..... Appellant

versus

INCOME TAX OFFICE ..... Respondent

Present: Mr. Gautam Jain with Mr. Madhur Jain, Advs. for appellant.
Mr. Zoheb Hossain, Sr. Standing Counsel for Revenue with Mr. Deepak Anand, Jr. Standing Counsel for Revenue.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **13.03.2018**

Admit.

The following question of law arises for consideration of this Court:

> *"Did the ITAT fall into error in not affording the opportunity to the assessee to cross-examine the concerned individual (Smt. Suchitra Vemuri) whose statement was relied upon and a photocopy of which was provided in the course of the assessment proceedings?"*

The assessees' grievance in these appeals is that opportunity to cross-examine Ms. Suchitra Vemuri was not granted and consequently the additions made, were vitiated.

Counsel for the Revenue points out that the issue of cross-examination, should not be entertained by this Court as in the original assessment proceedings, the appellant in ITA 743/2017, never made such a submission. It is urged that the inferences drawn by the AO were entirely based upon the probabilities and having regard to the two sets of documents – the disclosed copy of the agreement to sell that conformed to the reported transaction (contained in the final sale deed) and the other document which was withheld and that, in these circumstances the Court should not interfere with the findings of fact. It is also urged that in the other appeal i.e. ITA 744/2017 as well, the Court's examination of Smt. Suchitra Vemuri was never sought.

The proceedings before the CIT(A) show that the official observed that the AO could not be faulted for not providing opportunity to the appellant for cross-examination since the broad probabilities of the case have been considered.

Having regard to the state of the record, especially that the document relied upon was produced by a third party, whose cross-examination was not conducted, this Court is of the opinion that a limited remand – to the CIT(A), is called for. In the circumstances, the CIT(A) shall consider the matter afresh after affording the opportunity to the appellants to cross-examine Smt. Suchitra

Vemuri. The parties are directed to be present before the CIT(A) for this purpose on 20.03.2018. It is open to the CIT(A) to either record the cross-examination himself or seek a further remand to the AO on this aspect. The findings of the CIT(A), shall reflect the consideration of the evidence so gathered. It is made clear that the revenue authorities shall make reasonable attempts to ensure the presence of Smt. Suchitra Vemuri; however, in case of non-cooperation on her part, it is open to the revenue authorities to render findings on the basis of the existing record.

The appeals are partly allowed in the above terms.

Order *dasti.*

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MARCH 13, 2018
kks